

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

* * * * *

DEBRA STEFFANI IRVING

Appellant,

vs.

BOARD OF EDUCATION SCHOOL
DISTRICT NO. 1, VALLEY COUNTY,
STATE OF MONTANA

Respondent,

DECISION AND ORDER

OSPI 162-88

* * * * *

STATEMENT OF THE CASE

It is undisputed that: On February 24, 1988, Respondent School Board ("Board") decided to not renew the contract of Appellant, a non-tenured teacher. Subsequent to that decision Appellant did request and was provided written reasons for her nonrenewal.

On August 17, 1988, the Board hired Karen Ortmann, a district part-time tenured teacher to, along with other teaching duties, fill the part-time Spanish position.

On August 30, 1988, Appellant filed her Affidavit & Notice of Appeal with the County Superintendent of Schools, Valley County, requesting a hearing before the County Superintendent to resolve the dispute arising from action taken as a result of the August 17, 1988, decision of the Board of Trustees.

1 Following extensive briefing, the County Superintendent
2 issued her Decision and Order on November 10, 1988, determining
3 that she had no jurisdiction over the dispute and that the
4 matter must be dismissed.

5 On December 9, 1988, Notice Of Appeal was filed with this
6 State Superintendent pursuant to Section 20-3-107, MCA, and
7 Section 10.6.122, ARM. The parties submitted briefs supporting
8 their positions and requested oral argument. The State
9 Superintendent of Public Instruction scheduled oral argument for
10 10:00 a.m., April 19, 1989, in Helena, Montana.

11 Attorneys representing the parties presented oral arguments
12 at the scheduled time and place. The State Superintendent
13 recorded the oral arguments.

14 DECISION

15 The State Superintendent of Public Instruction has
16 jurisdiction of this appeal in accordance with Section 20-3-107,
17 MCA.

18 Having reviewed the complete record, read the briefs of the
19 parties and heard oral argument, this State Superintendent now
20 makes the following decision: The Decision and Order of the
21 County Superintendent resolving the dispute and denying
22 jurisdiction is affirmed. Appellant has no claim of entitlement
23 to reemployment as a legal right, duty or privilege giving rise
24 to a controversy requiring the county superintendent to hold a
25 hearing.

MEMORANDUM OPINION

The matter being appealed is the August 17, 1988, decision of the trustees to hire Karen Ortmann to fill a part-time Spanish position. (Appellant's brief, February 7, 1989, page .)

Section 20-4-206, MCA, as interpreted in Bridger Education Association v. Board of Trustees, Carbon County, School District No. 2, 678 P.2d 658, 16 Ed.Law Rptr. 1393 (Mont. 1984) does not create a property right in a nontenured teacher, although it does afford procedural protection to nontenured teachers in a nonrenewal situation. As a question of law, not a question of fact, an appeal from a nontenured teacher on whether the reasons given meet Bridger can be taken to the County Superintendent. No evidentiary hearing is required. Allen v. Roosevelt County School District No. 3, 4 Ed.Law St. Rptr. 10, (Mont. 1985). Appellant requested and was given reasons for nonrenewal. Appellant makes no allegation that she was denied a liberty interest. Furthermore Appellant failed to file her appeal within the 30 day period permitted by 10.6.103(5) ARM.

As to Appellants allegations of discrimination, her administrative forum is the Human Rights Commission. Sections 49-2-501, 49-2-504(7), MCA. The appropriate forum for challenging actions taken in an alleged unlawfully closed trustees' meeting is the district court. Section 2-3-114, MCA. These are not matters within the jurisdiction of the County Superintendent.

1 Section 20-3-210, MCA, states in pertinent part: "[T]he
2 county superintendent shall hear and decide all matters of
3 controversy arising in his county as a result of decisions of
4 the trustees of a district in the county." Rule 10-6-102 ARM
5 states: "School controversy means contested case. Contested
6 case means any proceeding in which a determination of legal
7 rights, duties or privileges of a party is required by law."
8 The phrase "required by law" includes statutory and
9 constitutional law. Appellant does not have a school
10 controversy as defined in 10.6.102 ARM.

11 There is no general right to the benefit of government
12 employment. Perry v. Sindermann, 408 U.S. 593, 597 (1972). A
13 teacher must evidence a legitimate claim of entitlement to
14 reemployment beyond a mere abstract need or desire for a
15 position. The due process clause of the federal and state
16 constitution requires the state to provide an individual "due
17 process of law" prior to depriving him of life, liberty or
18 Property. Due process protects already acquired specific
19 benefits, such as a right to reemployment. Such benefits are
20 bestowed by contract or state law; they are not created by the
21 constitution, but merely protected by its due process
22 provisions. A property interest exists in the following
23 cases: (1) where a teacher with statutory tenure is
24 nonrenewed; (2) where a teacher, regardless of tenure, is
25 discharged during the term of her contract; or, (3) where a
teacher without tenure or even a formal contract who has a

clearly implied promise of continued employment, is nonrenewed.
Board of Regents v. Roth, 408 U.S. 564, 576-578, (1972).

This Superintendent has uniformly held that there has to be a statutory right to appeal to the county superintendent, as in the statutes addressing dismissal under contract or the termination of tenured teachers. The language of 20-3-210, MCA, does not create of itself a right to review.

There is no authority, either statutory or constitutional, which allows that a person in Appellant's position is required by law to be given an opportunity for hearing before the county superintendent. The county superintendent lacks jurisdiction to require a board of trustees to interview certain people or to reopen a hiring decision. The Legislature has placed employment decisions with local trustees. Section 20-3-324, MCA.

The judgment of the County Superintendent or the State Superintendent cannot be substituted for that of the board of trustees in the exercise of its discretion with respect to renewal, nonrenewal, and hiring. To do so would divest that board of the authority granted to them by the legislature.

DATED THIS 1 day Of May, 1989.

Nancy Keenan
NANCY KEENAN
State Superintendent

CERTIFICATE OF SERVICE

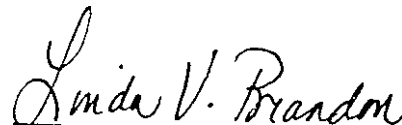
This is to certify that on the 1st day of May, 1989, a true and exact copy of the foregoing Order was mailed, postage prepaid, to:

Daniel L. Irving
110 5th Street South
Drawer B
Glasgow, MT 59230

Emilie Loring
Hilley & Loring
500 Daly
Missoula, MT 59801

Chadwick H. Smith
Smith Law Firm
P.O. Box 604
Helena, MT 59601

Ms. Janet Allie
County Superintendent
591 Court Square
Glasgow, MT 59230



Linda V. Brandon
Paralegal Assistant
Office of Public Instruction